gallons of spirit, then, could only have come from the "Choon Yuen" brand and then only if that had not already been all exhausted in being reblended into "V" brand.

Finally, there was 10 gallons in bottles of "Bee Chew" of a proof strength of 38% and of course bearing in mind the shortage in the wholesale stock this might well have come from downstairs.

These considerations would seem to produce this dilemma. Either "V" brand or the "Angel" brand could have come from the "Choon Yuen" brand downstairs but they could not both have come from it because there was not enough of it. There could not have been more than 28 gallons of this and its proof strength was 70%. It is a clear physical impossibility that this could have been broken down so as to produce 29 gallons of spirit of a proof strength of 64.8% and 13 gallons of a proof strength of 39%. There was no other possible source of supply whose ancestry could be traced back to the spirit obtained by the appellant from the distillery and in the circumstances the inference is irresistible that at least some of this 12 gallons of spirit came from some other source. It was for the appellant to show what that source was and he made no attempt to do so.

In the circumstances we would deal with the appeal as Azmi J. did by substituting for the first two convictions a single conviction and substituting for the first two fines of $1,000 and $5,000 a single fine of $4,250 or six months' imprisonment in default.

There remains the conviction for failing to keep up daily a Retail Stock Book in contravention of rule 61 of the Excise Rules, 1923. The allegation here was that the appellant had not made daily entries in an account book of his sales of liquor. The admitted facts are that he had not made these entries in his Retail Stock Book for some days but had made them in the Chinese language in another account book from which his Retail Stock Book was made up from time to time. The Magistrate gave no grounds for convicting him. Azmi J., after having pointed out that the rules do not specify any special form in which the entries are to be made went on to say that he would have accepted that there had been compliance with the rule if the rough book had been kept in English or Malay "since both are the languages of this Government". As, however, it was kept in Chinese he held there had not been compliance with the rule and he therefore upheld the conviction but taking the view that the offence was very technical reduced the fine imposed by the Magistrate to a nominal one of $5.

Here we can agree neither with the Magistrate nor with Azmi J. The rule requires that particulars of liquor sold "shall be entered each day" in an account book but nowhere in the Enactment or in the Rules is there any requirement that this or any other book shall be kept in any particular language. Where a statute requires an entry to be made in any book in any particular language it must say so. Examples of this are to be found in section 9 of the Pawnbrokers Enactment, various sections of the Rubber Supervision Enactment and in the Required Records and Accounts Ordinance, 1950. There is nothing of this sort here and therefore this conviction must be set aside.

Order accordingly.

Solicitors: *Das & Co.*

MAT'AIL v. MEK

[A. C. J. (Hepworth J.) April 12, 1960]

[Kota Bharu — Civil Appeal No. 14 of 1959]

Land Laws — Registered proprietor in possession — Interest — Finding by District Officer — Kelantan Land Settlement Ordinance, 1955, ss.7, 8 and 16 — Interpretation — Objects and Reasons in Bill.

Where the person in possession of land is the registered proprietor, the District Officer may make a finding under section 7 of the Kelantan Land Settlement Ordinance, 1955, but not one under section 8. A finding under section 7 must be as to the fact of possession and may decide nothing as to the right to possession.

Kelantan Land Settlement Ordinance, 1955, interpreted in the light of the Objects and Reasons published when that Ordinance was introduced as a Bill.

APPEAL under section 16, Kelantan Land Settlement Ordinance.

Parties in person.

Hepworth J. (delivering oral judgment): This is an appeal under section 16 of the Kelantan Land Settlement Ordinance, 1955, by one Ismail bin Hamat against an order of the District Officer, Pasir Mas, made under section 16, quashing a finding of the Assistant District Officer, made at an enquiry held under section 5 of the Ordinance, that the appellant was entitled to ½ of Lot 930, Mukim Bechah Semak, District of Pasir Mas, under section 8(1) and the respondent was entitled to the other ½ under section 7 of the Ordinance, and finding that the respondent was the proprietor in possession of the whole of the land concerned under section 7 of the Ordinance.

At the date of the enquiry by the Assistant District Oificer, which for some unaccountable reason appears nowhere in the Record, but which took place sometime in late 1958 or in early 1959, the respondent was the registered proprietor of Lot No. 930, Mukim Bechah Semak, Daerah Bunut Susu, in the District of Pasir Mas.

Letters of Administration in the Estate of Mamat bin Awang Kechik deceased, the father of the respondent, who had died in 1928, in Petition No. 399 of 1954, were granted to one Sulaiman

bin Mamat, the son of the deceased and brother of the respondent. The only beneficiaries were stated to be Sulaiman and the respondent and the only asset of the Estate was this Lot 930 which was registered in the name of the deceased.

At the date of the enquiry by the Collector the whole of Lot No. 930 was planted with padi, the western half having been planted by the respondent's son Awang bin Yaacob, and the eastern half with the approval of the respondent by her cousin, Mat Yusuf bin Awang.

At the time of this enquiry therefore it is a fact that the person in possession of the land was the respondent, that the respondent was the registered proprietor, and that she was in possession as registered proprietor as a result of the Supreme Court distribution order made in December, 1954.

This Lot No. 930 was transferred into the name of the respondent as the result of a distribution order dated the 6th December, 1954, and made by the Deputy Assistant Registrar of the Supreme Court stationed at Pasir Mas, in the distribution of the Estate of Mamat bin Awang Kechik deceased.

The appellant states that what actually had happened was that many years ago the deceased had sold half the land to him and that for many years after the death of the deceased in 1928 the appellant was in possession of that half of the land and had cultivated it. He stated that when application was made by Sulaiman bin Mamat for Letters of Administration to the Estate of the deceased, Sulaiman gave him to understand that he, Sulaiman, would see that half the land was transferred into the name of the appellant. In the event Sulaiman transferred the whole of the land to the respondent.

The relevant sections of the Land Settlement Ordinance are sections 7 and 8. Section 7 reads as follows:

"Whenever the District Officer is satisfied that the person in possession of any land at the date of the enquiry is or holds under the proprietor thereof . . . . . the District Officer shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Land Registrar, directing the registration of the interest so found."

Then section 8 sub-section (1) reads:

"Whenever the District Officer is satisfied that land in a Settlement Area is registered in the name of a person and that another is in possession thereof otherwise than holding under the proprietor the District Officer shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Land Registrar."

Section 7, therefore, applies where the person in possession of the land at the date of the enquiry is or holds under the proprietor and section 8 applies where the person in possession is not the proprietor and does not hold under the proprietor. As the person in possession of the property at the date of the enquiry in this case was the respondent and as she was at that date the registered proprietor it is apparent that section 7 applies in this case and that section 8 does not.

I think it may be useful if I refer to certain paragraphs of the Objects and Reasons which were published when this Ordinance was introduced as a Bill, so that a clearer picture can be obtained of the purpose and the intention of the legislature. Paragraphs 1, 2 and 3 of these Objects and Reasons are as follows:—

"The registration of land in Kelantan has got seriously out of date. It is desired to make a special effort in the near future to remedy the situation. The existing procedure laid down by the Land Enactment and the law relating to the distribution of estates is too elaborate and lengthy to be suitable for this purpose. The present measure is intended to simplify the procedure so as to ensure that the work of bringing the registers up to date can be completed within a comparatively short period.

2. A preliminary survey has indicated that in general the persons actually in possession of land are the persons who would be entitled to be registered as proprietor of the land under the Kelantan Land Enactment if all transactions and all devolutions of the land on death of the proprietor had been properly registered. To conduct a full inquiry into each unregistered transaction, affecting the 300,000 and more titles involved would be impracticable. It is therefore proposed that the inquiry should be of a summary character but that the title granted as a result should be provisional in any case when the registered proprietor is not in possession, so as to give a person claiming the registered title an opportunity to assert his claim in legal proceedings within three years.

"It is proposed that where the person in possession is not the registered proprietor that person (unless he is a tenant or otherwise admits the title of another) shall be registered with a possessory title which will become an absolute title after three years (subject to certain safeguards for children and persons under disability). During those three years he can be dispossessed by the person who can prove to the Court that he and not the person in possession is the person entitled to be registered as proprietor.

3. The great advantage of this system is that the District Officer holding the inquiry will be called upon to decide questions of fact only. He is to decide who is in fact in possession, a finding which Magistrates of the First Class are frequently called upon to make, e.g., under the F.M.S. Criminal Procedure Code Chapter XI — Disputes as to Immovable Property. He will also decide whether the person found to be in possession is the same person as the registered proprietor. He will not have to decide the right to possession, only the fact of possession".

It will be seen that the intention of the legislature is not that the District Officer or Assistant District Officer holding the enquiry shall decide the right to possession, but only the fact of possession. For the reasons I have stated in my opinion section 7 applies in the circumstances of this case and that all the Assistant District Officer was entitled to do on the facts which were put before him was to make a finding that the person in possession was the respondent and the respondent was the registered proprietor. As section 8 did not apply he had no power to make the finding that he did.

Although there is no doubt that the respondent was in possession of the land at the date of the enquiry as the proprietor and that she was in possession at that date as a result of the distribution order made in 1954, that is not to say that the appellant is or was necessarily without any remedy. It merely means that in the circumstances which exist in this case the Land Settlement Ordinance is of no use to him.

The appeal is dismissed with costs, such dismissal to be without prejudice to any further proceedings which he may be advised to take.

Appeal dismissed.